



***Office of Chief Public Defender  
State of Connecticut***

30 TRINITY STREET, 4<sup>TH</sup> FLOOR  
HARTFORD, CONNECTICUT 06106  
TEL (860)509-6429  
FAX (860)509-6499  
susan.storey@jud.ct.gov

ATTORNEY SUSAN O. STOREY  
CHIEF PUBLIC DEFENDER

**TESTIMONY OF ATTORNEY SUSAN O. STOREY, CHIEF PUBLIC DEFENDER  
*Raised Bill No. 6698, An Act Concerning Grand Jury Reform*  
Judiciary Committee  
April 15, 2013**

The Office of Chief Public Defender is opposed to *Raised Bill No. 6698, An Act Concerning Grand Jury Reform* and asks that the Judiciary Committee take no action on it. This bill is quite similar to Senate Bill 695 proposed in the 2008 session which did not garner the support of this Committee. Raised Bill 6698 is unnecessary and will only dilute the current grand jury process and put law abiding citizens in danger. Current law requires a panel of judges to report to the Chief Court Administrator the number of grand jury applications made and approved each year as well as the number of applications for extensions made. The reports from the last two years demonstrate that of all of the applications made, none were denied. In addition, a recent investigation into drug activity in the New London area resulted in numerous arrests after a collaborated effort by federal, state and local law enforcement. There is no necessity to have state officials duplicate federal law enforcement investigations.

The bill as proposed is unconstitutional and *would effectively repeal the Fourth Amendment* to the United States Constitution and Article I, Section 7 of the Connecticut State Constitution. Passage of the bill would result in overly broad investigations that would be conducted by prosecutors and compel the attendance/testimony of witnesses which can include children. This legislation would impact upon innocent persons, not suspected of criminal behavior, force them to incur legal costs and to appear and testify as witnesses after only 72 hours has passed from the issuance of a subpoena. Compelling persons to appear would significantly disrupt personal lives and could

result in findings of contempt against innocent persons, including children, if they do not respond to the grand jury subpoena and testify or produce property. Property that could be subpoenaed can include personal belongings such as a witness's personal journals, computers and medical/psychiatric record in contradiction to the constitutional right to be free of unreasonable searches and seizures.

The bill removes the authority of the Judiciary to apply for a grand jury investigation and authorizes any prosecutor in consultation with the Chief State's Attorney to apply for a grand jury application based only upon the bald assertion that the "interests of justice require" it. Any such application would be made to the presiding judge and not to a panel of three judges as required under current law.

The proposal authorizes a grand jury to convene whenever a prosecutor believes that "the interests of justice require." As such it strips away all other requirements in the statutes that currently need to be met including demonstrating that the grand jury is necessary to determine whether probable cause exists that a crime has been committed and that all other efforts of investigation have failed. Put simply, the standard of probable cause which currently exists and is well-settled in the law is totally removed from this proposal. This "interest of justice" threshold is subjective, not defined in law, and a minimal standard with no expressed criteria for implementation. Such expansive language allows unfettered discretion to state prosecutors to investigate whenever he/she wants information when they "reasonably suspect" a crime was committed and they wish to compel witnesses to testify and produce evidence. The bill substantially extends the time period for a grand jury to convene from 6 months to 12 months and allows for extensions of time to be granted only if the "interests of justice" require such.

Witnesses that can be summoned include people of all ages, including children. Any subpoenas issued must under the proposal be approved by the Judge and must be served at least 72 hours before the date the person so subpoenaed must appear and give testimony. That provides a person so subpoenaed only 3 days to obtain counsel and advice regarding the scope of the subpoena and to produce what could be voluminous records and documents. If a person is indigent and needs counsel, they will need to wait until they can travel to the court where the grand jury is convening, even if across the state, and apply for the appointment of counsel after completing an affidavit of indigency. They then must wait until counsel is appointed to discuss the scope of the subpoena as it applies to them.

Although the bill ostensibly allows assistance of counsel, once inside the grand jury room the witness is alone answering the questions of the Judge and/or the

prosecutor(s). The witness's lawyer is not allowed inside the grand jury room, although the witness can leave the room to consult with his/her counsel "at reasonable times" and "for a reasonable period of time" upon request, but there is no guarantee that the witness will be able to meet with the counsel for the amount of time necessary to obtain the needed advise. It appears that any discretion as to when and for how long such periods of time are within the discretion of the prosecutor.

This process is especially troubling in cases where juvenile are subpoenaed to appear before the grand jury. Our office has had some experience with this issue of a juvenile client subpoenaed from a residential facility to testify regarding incidents of gun violence in a Connecticut city. Although the client was not the target of the investigation, he clearly felt intimidated, confused and distraught about his safety should he testify about any of these events.

Section 7 deletes "grand jury" from subsection (2) so that it appears to authorize prosecutors to issue investigative subpoenas outside the grand jury process "in any investigation conducted by the Chief State's Attorney or any other prosecutor in this state whenever they are investigating crime and then refers to the grand jury statutes making this section confusing as to intended meaning.